



MEMO ENDORSED

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July 23, 2021

VIA ECF and E-Mail (Failla NYSDChambers@nysd.uscourts.gov)

The Honorable Katherine Polk Failla, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 21003
New York, NY 10007

**Re: Massachusetts Bay Insurance Company v. Scottsdale Insurance Company,
et al .
Civil Action No.: 1:20-cv-07554-KPF**

Dear Judge Failla:

This firm represents Plaintiff, Massachusetts Bay Insurance Company (“Plaintiff”) with respect to the above matter. Please accept the subject Letter Motion pursuant to Local Civil Rule 7.1(d) as the parties’ joint request for a stay of this matter in light of the effective stay of discovery in the underlying personal injury matter.

In the subject litigation, Plaintiff seeks a judgment declaring that Defendant is obligated to provide Plaintiff’s insureds with defense and indemnification in an underlying action entitled, Jeffrey E. Monge, as Administrator of the Estate of Eduardo Monge v. The Moinian Group, et al., Index No. 33312/2018E (the “Underlying Litigation”), under a general liability insurance policy issued by Defendant to its insured, Five Star Carting, LLC (“Five Star, LLC”). While the parties in this matter have engaged in paper discovery, additional discovery is needed with respect to the ongoing Underlying Litigation, which has been at an effective standstill because of the COVID-19 pandemic. In particular, in addition to discovery related to liability for the decedent’s injuries, discovery related to the formation of the contract entered into by the parties’ insureds requiring procurement of insurance, is necessary to adjudicate the claims in this matter. For example, the parties in this matter anticipate testimony in the Underlying Litigation addressing who the contracting parties were and who were the intended beneficiaries of the agreement, which will directly bear on the availability of insurance coverage in this case.

At this point, as noted above, little, if anything, has taken place in the Underlying Litigation since the beginning of the pandemic, an issue which counsel in this case had no ability to control or impact. At this point, however, it is the parties’ understanding, based on discussions with underlying counsel, that the Underlying Litigation is starting to move forward and that depositions of the relevant parties are expected to start in October 2021.



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As such, and in lieu of simply seeking an extension of discovery, the parties respectfully request that this matter be stayed until the relevant discovery has taken place in the Underlying Litigation. The parties herein fully expect that once the relevant discovery has concluded, this matter can be disposed of either by way of agreement of the parties or as a matter of law by way of cross-motions for summary judgment. This is the second request/motion seeking a modification of the Civil Case Management Plan and Scheduling Order.

In light of the foregoing request, the parties would further ask that the pretrial conference, presently scheduled for August 3, 2021 at 10:00 a.m. be adjourned and this case be stayed in its entirety. The parties will advise the Court once facts have been developed in the underlying case and the stay can be lifted.

We thank the Court for its time and attention to this matter.

Respectfully Submitted,

/s/ Seth A. Abrams

SETH A. ABRAMS

cc: Daniel A. McFaul, Esq. (via ECF and E-Mail)

Application GRANTED. This matter is stayed pending further order by the Court. The parties are directed to submit a joint status letter at the earlier of either November 23, 2021, or significant development in the underlying litigation. The conference scheduled for August 3, 2021 is hereby adjourned *sine die*.

Date: July 23, 2021
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE